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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,791	12/20/2001	James W. Clark	KCX-391(16284)	9606
22827	7590	05/31/2005	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			BOYD, JENNIFER A	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/027,791	<b>Applicant(s)</b> CLARK ET AL.	
	<b>Examiner</b> Jennifer A. Boyd	<b>Art Unit</b> 1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-38 and 49-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-38,49-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*ve*

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Applicant's Amendments and Accompanying Remarks, filed March 14, 2005, have been entered and have been carefully considered. Claims 1, 25, 27, 29, 34 – 35, 38 and 49 – 51 are amended and claims 1 – 6, 8 – 38 and 49 – 55 are pending. The invention as currently claimed is unpatentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

3. Claims 1 – 6, 8 - 9, 11 – 38 and 49 - 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison et al. (US 2002/0103098 A1). The details of the rejection can be found in paragraph 3 of the previous Office Action dated December 14, 2004. The rejection is maintained.

Applicant has amended claims 1, 25, 27, 34 – 35, 38 and 49 – 51 to require that the solution is the “released solution” that is released from the substrate during the use of the wiper in food service applications. Harrison discloses the claimed invention except for that the quaternary ammonium compound is present in an amount less than 2000 parts per million of the *released* solution as stated in claims 1, 27 and 35, the quaternary ammonium compound is present in the amount of about 150 to about 400 parts per million of *released* solution as stated in claims 25, 34 and 38 and the quaternary compound is present in an amount of less than about

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400 parts per million of the *released* solution as stated in claims 49 - 51. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create a wiper where the quaternary ammonium compound is present in an amount less than 2000 parts per million of the *released* solution as stated in claims 1, 27 and 35, the quaternary ammonium compound is present in the amount of about 150 to about 400 parts per million of *released* solution as stated in claims 25, 34 and 38 since it has been held that where general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454 USPQ 233 (CCPA 1955). In the present invention, one would have been motivated to optimize the amount of solution present in the wipe to control the amount of released solution when in use in order to create a wipe with optimal biocidal effectiveness.

4. Claims 1 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dodd et al. (US 6,656,456). The details of the rejection can be found in paragraph 4 of the previous Office Action dated December 14, 2004. The rejection is maintained.

Applicant has amended claim 1 to require that the solution is the “released solution” that is released from the substrate during the use of the wiper in food service applications. Dodd discloses the claimed invention except for that the quaternary ammonium compound is present in an amount less than 2000 parts per million of the *released* solution as stated in claim 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create a wiper where the quaternary ammonium compound is present in an amount less than 2000 parts per million of the *released* solution as stated in claim 1 since it has been held that

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where general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454 USPQ 233 (CCPA 1955). In the present invention, one would have been motivated to optimize the amount of solution present in the wipe to control the amount of released solution when in use in order to create a wipe with optimal biocidal effectiveness.

### ***Response to Arguments***

5. Applicant's arguments filed March 14, 2005 have been fully considered but they are not persuasive.

6. Applicant argues that Harrison fails to recognize the unique aspects provided by the wipers of the present application. Applicant submits that the present application has found that making a wiper with a specific combination of features (e.g., certain components in sanitizing formulation certain relative amounts of those components, certain add-on levels, etc.) will result in a wiper that releases a relatively small amount – e.g., less than 2000 parts per million – of quaternary ammonium compound when the wiper is used in food service applications, while at the same time attaining a high log reduction for E. coli. The Examiner has submitted that it would be obvious to optimize the amount of solution present in the wiper so that the desired amount of released solution containing quaternary ammonium compound would be released upon use. The Applicant argues that the combination of features is unique and would result in unexpected results. It is the burden of the Applicant to demonstrate that the claimed ranges are unexpected and are not a matter of simple optimization. The Examiner highly suggests to the Applicant to submit a 37 CFR 1.132 Declaration to establish unexpected results. In the

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Declaration, the Applicant should compare a sufficient number of tests both inside and outside the claimed range to show the criticality of the claimed range. In re Hill, 284 F.2d 955, 128 USPQ 197 (CCPA 1960) and must compare the claimed subject matter with the closest prior art to be effective to rebut a prima facie case of obviousness.

7. In response to Applicant's argument that the inclusion of the anionic surfactant of Harrison materially affects the basic and novel characteristics of the sanitizing formulation, the Examiner submits that there is no evidence of record to substantiate Applicant's allegation. The Applicant has indicated that the inclusion of anionic surfactant would cause the antimicrobial agents to undesirably precipitate out. However, Applicant further admits that Harrison discloses additional components to dissolve the precipitate. If the basic and novel characteristic of the Applicant's invention is that no precipitate would remain on the cleaned surface after utilizing the wipe, the Examiner submits that the precipitate of Harrison would not be of concern because the additional components would dissolve the precipitate. Therefore, the end result after wiping with Applicant's wipe and the wipe of Harrison would be the same. The Examiner requests that the Applicant clearly state what are the basic and novel characteristics of the invention and how the inclusion of an anionic surfactant would affect the basic and novel characteristics.

8. Applicant argues that Dodd does not disclose or suggest a wiper wherein a sanitizing formulation is applied to the substrate in an amount from about 150% to about 600%, a sanitizing formulation that includes a surface component that "consists essentially of" one or more nonionic surfactants or that the substrate is configured for use in food service applications and releases a quaternary ammonium compound in an amount less than 2000 parts per million of released solution. The Examiner has submitted that it would be obvious to optimize the amount

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of sanitizing formulation in order to effectively and efficiently clean the desired surface.

Secondly, Dodd specifically discloses that a surfactant can be used in the composition. Although, it is not required as pointed out by Applicant, the use of a nonionic surfactant is still suggested by Dodd. Furthermore, the Examiner has submitted that it would be obvious to optimize the amount of solution present in the wipe to control the amount of released solution when in use in order to create a wipe with optimal biocidal effectiveness. It is the position of the Examiner that upon optimizing the amount of solution applied to the substrate and released upon use, the level of log reduction for E. coli would be inherent. The Applicant argues that the combination of features is unique and would result in unexpected results. It is the burden of the Applicant to demonstrate that the claimed ranges are not a matter of simple optimization. The Examiner highly suggests to the Applicant to submit a 37 CFR 1.132 Declaration to establish unexpected results. In the Declaration, the Applicant should compare a sufficient number of tests both inside and outside the claimed range to show the criticality of the claimed range. In re Hill, 284 F.2d 955, 128 USPQ 197 (CCPA 1960) and must compare the claimed subject matter with the closest prior art to be effective to rebut a prima facie case of obviousness.

9. In response to Applicant's argument that Harrison and Dodd fail to teach that the sanitizing formulation is configured so that it releases from the substrate as a solution during use of the wiper in food service applications, the Examiner respectfully argues that Harrison and Dodd meets all the *claimed* structural and chemical limitations set forth by the Applicant. There is nothing on record that shows that the fabric of Harrison and Dodd cannot be incorporated into a wipe for use in food service applications. It would have been obvious to incorporate the wipe

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of Harrison and Dodd into use for a food service application motivated by the desire to expand the range of uses for the wipe.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.




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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer Boyd  
May 24, 2005

  
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